Drawing Amendments

Replacement drawing sheets 1-11 are attached. Entry is respectfully requested.

Double Patenting

Applicant respectfully traverses the provisional nonstatutory double patenting rejection. For clarity, the following argument uses a patent cited against a pending application, but is equally applicable to the instant provisional double patenting rejection.

To establish a prima facie case of nonstatutory-type double patenting the examiner must: 1. Identify the inventions claimed in the claims under consideration and in the patent claims, 2. Establish that any variation between the inventions claimed in the claims under consideration and the earlier issued patent claims would have been obvious to a person or ordinary skill in the art, and 3. Show obviousness using the analysis used to establish a prima facie case of obviousness. *See* In re Longi 759 F.2d 887, 225 USPQ 645, 651 (Fed. Cir. 1985).

Hence, the examiner has the initial burden to show that the <u>inventions claimed</u> are not patentably distinct and are based on a prima facie showing of obviousness. A finding by the examiner that the claims themselves are obvious variations is legally insufficient.

The examiner has issued the rejection based on a dissection of the claim <u>language</u> as though it were prior art. That is an improper rejection because the comparison should be between the inventions defined <u>by</u> the claims, not the language <u>in</u> the claims.

Additionally, the second and third steps of a prima facie case of obviousness type double patenting requires the examiner to show that any variations between the inventions being claimed would have been obvious to a person of ordinary skill in the art,

using the test of obviousness defined in KSR International Co. v. Teleflex, Inc. 127 S.Ct.

1727 (2007). The examiner has failed to support his assertions of obviousness by valid

prior art evidence.

Because the examiner has failed to establish a prima facie case, the rejection

should be withdrawn.